

CHAPTER 24

ACTIVITIES RELATED TO PROGRAMS ADMINISTERED BY OTHER FEDERAL AGENCIES

24-1. General. Originally, Federal functions with respect to water resources development involved single-purpose projects by specific agencies with clear-cut divisions of responsibility. Successive acts of Congress have extended the functions, authorities, jurisdictions and interests of Federal agencies in different phases of land and water resources conservation and development. In view of frequent incompatibility among various uses, it is important that maximum possible coordination be achieved. This is required by legislation and various Administration directives. Consideration of work for other agencies is an important factor in preparation of budgets and capabilities. Authorities and procedures for assisting agencies in accomplishing activities are discussed in Chapter 22 - Support for Others. Following are brief summaries of the policies on other agency activities that are related to Corps programs. See also Appendix D - Interagency Agreements.

24-2. Environmental Review and Coordination. The Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 (Public Law 91-190) require the Federal agency having primary responsibility for preparing an environmental impact statement (EIS) to determine whether any other Federal agencies have jurisdiction by law, a statutorily mandated consultative role, or special expertise on environmental quality issues. "Jurisdiction by law" is defined as authority to approve, deny, or finance all or part of a proposal, and encompasses permits and licenses. "Special expertise" is defined as statutory responsibility, agency mission or related program experience. Appendix II of CEQ regulations lists Federal agencies so defined. The Corps review of another agency's EIS should be specific and may address either the adequacy of the EIS or the merits of the alternatives, or both, where the Corps has jurisdiction by law (Section 10, Section 404, etc.) or special expertise (flood control, navigation, water supply, etc.). District commanders are designated as responsible NEPA officials for providing comments on other agencies EIS's except proposals requiring HQUSACE or ASA(CW) review. (ER 200-2-2)

24-3. Watershed Protection. The Natural Resources Conservation Service (NRCS), under authority of the Watershed Protection and Flood Prevention Act of 1954 (Public Law 83-566, as amended), constructs dams and implements other measures in upstream watersheds for a variety of purposes including flood control. The Corps cooperates fully with the NRCS in carrying out its program and strives to bring about coordination between the Public Law 83-566 program and the programs of the Corps. (EP 1165-2-2)

24-4. National Wild and Scenic Rivers System. The National Wild and Scenic River System was established by the Wild and Scenic Rivers Act (Public Law 90-542, as amended) to protect the environmental values of free-flowing streams from degradation by impacting activities including water resources projects. The system is administered jointly by the Forest Service, Department of Agriculture, and the National Park Service (NPS), Department of the Interior. Corps activities on the streams included in the system are subject to review by whichever of these agencies is responsible for the specific stream. Discharges into streams, impoundments, diversions, channel alterations, and other measures can alter the stream discharge,

velocity, and channel dimensions. These hydraulic changes may cause modifications to the free-flowing character of the stream, resulting in loss or diminution of its environmental values. The Wild and Scenic River Act requires consideration of the impacts and consultation with the responsible agency prior to implementation of a project.

24-5. Land and Water Conservation Fund. The NPS provides assistance to the states and territories in preparing and maintaining Statewide Comprehensive Outdoor Recreation Plans (SCORPs) under the Land and Water Conservation Act of 1964 (Public Law 88-578, as amended). Planning for recreation development at Corps projects is coordinated with the appropriate states so that the plans are consistent with public needs as identified in the SCORPs. The Corps must coordinate with the Secretary of Interior to insure that no property acquired or developed with assistance from this Act will be converted to other than outdoor recreation use. (ER 1165-2-400)

24-6. Community Development Program. Title I of the Housing and Community Development Act of 1974 (Public Law 93-383) establishes a program of community development block grants. This program is administered by the Department of Housing and Urban Development. The primary objective of the Community Development Program is the development of viable communities, including decent housing and suitable living environment and expanded economic opportunities, principally for persons of low and moderate income. Under the program, cities may undertake a wide range of activities directed toward neighborhood revitalization, economic development, and provision of improved community facilities and services. Some of the specific activities that can be carried out with block grant funds include acquisition of real property; relocation, demolition and rehabilitation of residential and nonresidential structures; and provision of public facilities and improvements such as neighborhood centers, streets, water and sewer facilities and flood and drainage facilities. In addition, block grant funds are available to pay for certain public services which are appropriate or necessary to support other block grant activities. The Corps participates in community development activities in various ways. Participation includes acting under existing authorities for flood damage reduction, beach erosion control, or navigation improvement. The Corps provides technical information and advice or, where appropriate, serves as an engineering consultant in areas of special Corps expertise.

24-7. Small Reclamation Projects. The Small Reclamation Projects Act of 1956 (Public Law 984, 84th Congress, as amended), established a program under which non-Federal organizations in the 17 contiguous western states and Hawaii can obtain loans for small reclamation projects. The Corps, in cooperation with the Bureau of Reclamation, assists in analysis and evaluation of the Federal interest when loan applications propose projects which involve flood control effects. (ER 1165-2-111)

24-8. National Recreation Areas. National Recreation Areas (NRA) at Corps reservoirs will normally be developed and managed by the Corps of Engineers in accordance with the project's authorizing legislation. A Corps project may be so located, or may be of such size and nature, that it would make a desirable addition to a major resource area being administered by another Federal agency. In such cases, the Corps may enter into an agreement under which the area will be managed as an NRA by that agency. (ER 1165-2-400)

24-9. Forest Service Lands. The policy of developing recreation as an integral part of a coordinated overall management plan includes reservoir projects of the Corps located within or partly within the National Forest System. District commanders and Forest Supervisors cooperate at all project stages in accordance with a Memorandum of Agreement, dated 13 August 1964, by the Secretaries of the Army and Agriculture. The objective is to meet the public needs of both the national forest and the water resource projects in a cost efficient manner. (EP 1165-2-2)

24-10. National Trails System. Public Law 90-543 prescribes procedures for setting up national recreation and scenic trails. National recreation trails located near urban areas may be established by the Secretary of the Interior or by the Secretary of Agriculture where lands administered by either are involved. National scenic trails, and extended trails so located as to provide for maximum outdoor recreation potential, are established by Acts of Congress. The Corps recognizes that the aesthetic attractiveness of scenic corridors available on project lands can be enhanced by incorporation of trails or trail systems. Accordingly, wherever warranted by the current or potential public use of Corps water resource projects, consideration is given in planning to the incorporation of trails. In addition, as part of coordination with NPS, the Corps must identify, evaluate, and coordinate any impacts to the National Trails System as a result of proposed or ongoing activities.

24-11. Endangered and Threatened Species. The Endangered Species Act of 1973 (Public Law 93-205), as amended (Public Laws 95-632, 96-159 and 97-304), states the policy of Congress is that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act. The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved and to provide a program for the conservation of such endangered species and threatened species. Section 7 states that all Federal departments and agencies shall, in consultation with and with the assistance of the Secretary of the Interior/Commerce, insure that any actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat...determined by the Secretary (Interior/Commerce)...to be critical unless an exception has been granted by the Endangered Species Committee. Additional guidelines for protection of marine mammals are established in Public Law 92-522, as amended. Consultation procedures are administered by the Fish and Wildlife Service (FWS), Department of the Interior, and the National Marine Fisheries Service (NMFS), Department of Commerce. Federal agencies must request the FWS or NMFS, as appropriate, to furnish information as to whether any listed species or designated critical habitat are in the proposed project area. If the FWS/NMFS provides listed or proposed species or designated critical habitat, the agency must prepare a biological assessment to determine if the proposed project may affect the species or habitat. The biological assessment must be completed within 180 days. No construction contract will be awarded before completion of the assessment. Based on the biological assessment results and other information the agency shall initiate formal consultation with the FWS/NMFS if listed endangered or threatened species or designated critical habitat may be affected. Consultation shall be concluded within a 90-day period (or other period mutually acceptable to the agency and FWS/NMFS). During consultation, the agency shall not make any irreversible or irretrievable commitment of resources that would have the effect of

foreclosing the formulation or implementation of any reasonable and prudent alternative measures. Promptly after conclusion of consultation, the FWS/NMFS shall provide the agency with a biological opinion on how the agency's proposed action will affect the species or critical habitat and, if appropriate, shall suggest reasonable and prudent alternatives. Federal agencies are required to consider reasonable and prudent measures to protect and conserve the species and critical habitat.

24-12. Federal Energy Regulatory Commission (FERC) Licenses. Under the Federal Power Act (Public Law 280, 66th Congress), non-Federal entities are required to obtain from the Federal Power Commission (now FERC) a license for construction and operation of hydroelectric power developments affecting navigable waters, lands of the United States, or interstate commerce. The Act requires the proposed power project to be optimally related to comprehensive development plans. All applications for license are referred to the Corps and other agencies for views and recommendations concerning licensing and provisions to be included in the license or renewal if issued. Applications for FERC permits which give the applicant priority of interest in a power site pending completion of studies, but do not authorize construction, are likewise referred to the Corps. The Act also specifies that no license affecting navigation shall be issued until the plans are approved by the Chief of Engineers and the Secretary of the Army. (ER 1110-2-1454)

a. License Renewal. The United States has the right, upon the expiration of any FERC license, to take over and thereafter to operate the project under certain circumstances, if such action is in the public interest. The Corps is required to comment on license renewal applications. Although a number of licenses have recently expired, the Corps has, to date, not recommended takeover in any case to the FERC.

b. Distinction between Corps of Engineers and FERC Jurisdiction with Respect to Non-Federal Hydroelectric Project.

(1) The following procedures are currently being followed in connection with Department of Army permit responsibilities involving pre-1920 legislation:

(a) In regard to FERC licensing of projects, Corps responsibilities under Section 10 of the River and Harbor Act of 1899, for power related activities, may normally be met through the FERC licensing procedure including insertion in the license of terms and conditions in the interest of navigation. Section 4(e) of the Federal Power Act provides for approval of project plans by the Chief of Engineers and Secretary of the Army from the standpoint of interests of navigation. On 11 March 1975, the Secretary of the Army delegated the subject authority to the Chief of Engineers. On 5 September 1980, the Chief of Engineers delegated Section 4(e) approval to the respective division. The consideration for Corps approval under Section 4(e) will be limited to effects of a project on navigation.

(b) Non-Federal hydroelectric power proposals at Corps projects must satisfy public interest requirements in water resources development as required by the Federal Power Act and must meet the following Corps of Engineers general requirements:

-- Hydroelectric power development must be compatible with authorized purposes of the Federal project. Verification of compatibility may require physical and/or mathematical modeling, costs

of which should be borne by the applicant.

-- Full hydroelectric power potential of the site must be considered in planning, design and construction of a power plant.

-- Design, construction and operation of all power facilities that will be an integral part of the dam or that would affect the structural integrity of the Federal dam, including construction procedures and sequence, must be approved by the Corps.

-- In the interest of multiple-purpose water management, the Corps requires a signed memorandum of understanding (MOU) between the prospective licensee and the Corps specifying the operational procedures and power rule curves consistent with overall project management objectives. The MOU must be signed prior to start of power operation.

-- Prospective licensee must reimburse the Federal Government for the use of lands and facilities and for an appropriate part of the costs of the existing Federal project by which the head created at the Federal project makes the installation of power feasible. Assessment of these costs, development of charges therefrom, and collection of charges will be accomplished by FERC.

-- Reimbursement to the Federal Government will also be required for any additional construction costs incurred by the Federal Government as a result of installation of the power facilities. Such costs will be determined and collected by the Corps.

-- Prospective licensee must furnish electric power free of cost to the United States for operation and maintenance of the project navigation facilities. The power will be furnished at voltage and frequency required by such facilities, whether such facilities are constructed by the licensee or by the United States.

-- The prospective licensee shall furnish, operate and maintain adequate lights, signals and protective warning devices in conjunction with the pondage operation to provide for safe navigation and for the safety of persons using the public recreational facilities at the Federal project.

(c) Applications to Corps division or district commanders for approval of repairs, maintenance or modification of non-Federal hydroelectric projects authorized under River and Harbor Acts as well as special Acts of Congress prior to 1920, or requests for advice with respect thereto, should be referred to FERC for consideration in accordance with the provisions of the Federal Power Act. The applicant should be advised that the matter is being referred to the FERC for consideration and that, if a FERC license is required, Corps recommendations will be furnished to the FERC.

(2) Responsibilities under Section 404 of the Clean Water Act (CWA) of 1977 pertinent to discharge of dredged or fill material into the navigable waters at specified disposal sites will be met only through the Department of Army permit procedures. In regard to FERC cases involving Section 404, the Corps report to the FERC will specify the need for a Department of Army permit (Section 404) if, on the basis of the division and district commanders' findings, such permit is deemed necessary. A Department of the Army permit will be required for any portion of a proposed project which involves the discharge of dredged or fill material into the waters of the United States. This includes the placement of fill necessary for construction of a

project's dam and appurtenant structures.

(3) When applicable, FERC will be advised that the requirement for Department of the Army permit pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 for the transport of dredged material from the project site for the purpose of dumping it into the ocean waters will be met only through the Department of the Army permit program.

(4) In connection with FERC licensed projects, there may be proposed nonpower water oriented activities, such as recreational development, which are associated with the overall project but may not be a part of the hydroelectric power facilities at the project. If such cases involve navigable waters, they should be reviewed from the standpoint of need for a Section 10 permit. Such Section 10 permit actions would involve consideration of the overall public interest including water quality, fish and wildlife, recreation, general environmental concerns and the needs and welfare of the people. Corps responsibilities for permit requirements under Section 10 of the River and Harbor Act of 1899 for nonpower activities affecting navigable waters at licensed FERC projects will be met only through the Army permit procedures. The Corps report by the division commanders to FERC will specify the need for such permit as deemed necessary.

24-13. Prime and Unique Farmland.

a. Farmland Protection Policy Act. This Act (Subtitle I of Title XV of the Agriculture and Food Act of 1981) is implemented under Department of Agriculture final rule effective 6 August 1984 (7 CFR 658). The final rule requires that Corps FOAs contact the NRCS for identification of prime or unique farmland which might be impacted by proposed Corps actions. Prior to taking any action that would result in conversion of designated prime or unique farmland to nonagricultural uses, the Corps must examine the potential impacts of the proposed action and, if there are adverse effects on farmland preservation, consider alternatives to lessen the adverse effects. It is within the Corps discretion to proceed with a project that would result in conversion of farmland to nonagricultural uses once the required examination has been completed. The final rule also requires the Corps to ensure that its programs, to the extent practicable, are compatible with state, local and private programs for the protection of farmlands and encourages the Corps and other Federal agencies to make the analysis of farm conversion impacts an integral part of their review under NEPA.

b. CEQ 11 August 1980 Memorandum. The Corps has considered the effects of its proposed actions on agricultural lands, through the environmental assessment process, since issuance of a 30 August 1976 CEQ memorandum. The 11 August 1980 memorandum superceded the earlier one and reinforced the prior requirement that Federal agencies analyze the effects of their proposed actions on prime and unique farmland as an integral part of their environmental assessment process under NEPA. It is the Corps position that compliance with the evaluation requirements of the Farmland Protection Policy Act (final rule) also will satisfy the assessment requirements set forth in the CEQ memorandum. Preliminary reviews and assessments will be summarized in the draft NEPA document, and the results of the completed evaluations in the final document.

24-14. Highly Erodible Lands and Wetlands Conservation. The Food Security Act of 1985 (Public Law 99-198) contains provisions designed to discourage the conversion of wetlands into non-wetland areas

(these, collectively, are commonly referred to as "Swampbuster" provisions). These provisions, implemented under Department of Agriculture (USDA) final rule effective 17 September 1987 (7 CFR 12), are administered by the NRCS. The final rule sets forth the terms and conditions under which a person, who has produced an agricultural commodity on newly converted wetlands, shall be declared ineligible for certain benefits provided by USDA. Such benefits include: commodity price support or production adjustment payments; farm storage facility loans; disaster payments; payments for storage of grain owned or controlled by the Commodity Credit Corporation; Federal crop insurance; and FmHA loans. Farmers who plant commodity crops, after 23 December 1985, on lands that were converted from a wetland to a non-wetland condition by a Corps project will trigger "Swampbuster" considerations which may lead to the cited USDA program ineligibilities. This could result in lessening of sponsor support for a project and a reduction in estimated benefits that might otherwise have been attributed to the project proposal. It could also change the with and without project assumptions used to establish environmental impacts and associated mitigation needs; this is particularly significant where habitat preservation credit is a component of mitigation plans. The Corps coordinates its flood control plans involving agricultural lands with the NRCS, and alerts project sponsors and affected farmers of their responsibilities for meeting requirements set forth in the "Swampbuster" provisions of the Food Security Act of 1985. The Act provides for certain "third party" exemptions which may be available to landowners who receive ancillary drainage benefits from Corps projects. It is the responsibility of the individual landowner, not the Corps, to request such an exemption.

24-15. Superfund Program. The Environmental Protection Agency (EPA) is assigned primary responsibility under Executive Order 12580 for implementing the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96-510), commonly referred to as "Superfund." An interagency agreement with EPA executed 3 December 1984 (replacing an earlier agreement of 3 February 1982) provides for the Corps to assist EPA in certain ways. EPA has a three-tiered process that will determine the extent of Corps assistance. Under the process, EPA will: (1) determine whether a private entity is liable for clean-up and will approach that entity to perform the work of clean-up; if that does not develop, then (2) determine whether the state can/will do the clean-up; if not (3) determine that Federal clean-up is appropriate and request the Corps to undertake the work. The Corps will serve as contract manager as follows:

- a. Review design
- b. Monitor construction
- c. Provide technical assistance to EPA
- d. Review state plans at EPA request

The actual design and construction will be performed by contract with private firms under supervision by the Corps.

24-16. Coastal Zone Management Act (CZMA) of 1972, as amended (Public Laws 92-583 and 101-508). This Act declared a national interest in the effective management, beneficial use, protection and development of the coastal zone. It indicates that the primary responsibility for planning and regulation of land and water uses rests with the state and local governments. The Act states that Congress finds that the key to more effective protection and use of the land and water

resources of the coastal zone is to encourage the states to exercise their full authority over lands and waters in the coastal zone. The Secretary of Commerce is authorized to award Federal grants to assist the states in developing and administering land and water use management programs for the coastal zone giving full consideration to ecological, cultural, historic and esthetic values as well as to the need for economic development. Federal agencies proposing activities or development projects including civil works activities, whether within or outside of the coastal zone, that are reasonably likely to affect any land or water use or natural resource of the coastal zone, must assure that those activities or projects are consistent, to the maximum extent practicable, with the approved state programs. For non-Federal projects, a required Corps permit listed in the state's coastal management program cannot be issued until the state has concurred with the permit applicant's certification of compliance with the plan or until the state has waived its right to do so.

24-17. Coastal Barrier Resources Act of 1982 (Public Law 92-348). This act established the Coastal Barrier Resources System, consisting of 182 units of undeveloped barrier islands on the Atlantic and Gulf coasts, and prohibits Federal expenditures for construction, purchase, or stabilization projects within those units. It is administered by the Secretary of the Interior through the FWS. The intent is to protect fish, wildlife, and migratory habitats; to prevent loss of human life; and to preclude Federal expenditures that induce development on coastal barrier islands and adjacent nearshore areas. Except for maintenance of existing projects, e.g., dredging, no new Federal expenditures or financial assistance is allowed for areas within the system.

24-18. Abandoned Shipwreck Act of 1987 (Public Law 100-298). This act creates Federal authority to transfer ownership of abandoned shipwrecks to the state on whose submerged lands the wreck is located. The Department of the Interior administers the Act through regulations issued by the NPS. Exceptions are those shipwrecks on public lands of the United States, which will be kept in Federal ownership, and those on Indian lands, which will be the property of the Indian tribe owning the land rights. The Act provides Federal protection to any shipwreck which meets the criteria for eligibility for inclusion in the National Register for Historic Places. Therefore, disposal of dredged or other material on or in the near vicinity of such wrecks is prohibited.

24-19. Support to the National Flood Insurance Program (NFIP). Under interagency agreements, the Corps provides technical assistance to FEMA on a reimbursable basis in support of the NFIP. Two components of that program, the accomplishment of Flood Insurance Studies (FISs) and Limited Map Maintenance Program (LMMP) efforts, require detailed hydrologic and hydraulic analyses to determine areas of flood hazards and the degree of flood risk. Study requirements for these components are outlined in the Corps "Instructions for Flood Insurance Studies," FEMA's "Guidelines and Specifications for Study Contractors" and supplementary directives by FEMA. Another component of the NFIP, the Community Assistance Program (CAP), requires tasks which assist local officials in the administration of the NFIP for their community. Applicable tasks include surveying of additional elevation reference marks, performing community assessment visits, holding floodproofing workshops, etc. Guidance for this component is outlined in FEMA's "Community Assistance Program Manual" and subsequent directives by FEMA.

24-20. Department of Energy (DOE) Real Estate Assistance. Pursuant to a memorandum of agreement between DOE and Army, effective 26 August

1987, Corps offices assist DOE in the acquisition and management of real estate. According to this agreement, Corps offices acquire lands and interests on behalf of DOE in accordance with existing Corps procedures and in accordance with applicable laws, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646). (ER 405-1-12)

24-21. Department of Commerce (DOC) Real Estate Assistance. Pursuant to a memorandum of agreement between the DOC and the Corps, effective 6 September 1985, Corps offices assist the DOC in the acquisition of real estate for National Weather Service (NWS) installations. (ER 405-1-12)

24-22. National Estuary Program. This program was established under Section 317 of the Water Quality Act of 1987 (Public Law 100-4). Compliance requires coordination with the EPA and the designated state agency.